

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Maurice Gene Hand, Director of ) Application No. DC-71/  
the Communications Department of ) NUSF-53  
the Nebraska Public Service )  
Commission and Jeffrey L. )  
Pursley, Director of the )  
Nebraska Universal Service Fund )  
Department of the Nebraska )  
Public Service Commission, )  
) ORDER  
Complainants, )  
)  
)  
v. )  
)  
)  
Qwest Corporation, ) Entered: September 19, 2006  
)  
Respondent. )

BY THE COMMISSION:

On March 2, 2006, Maurice Gene Hand, Director of the Communications Department and Jeffrey L. Pursley, Director of the Nebraska Telecommunications Infrastructure and Public Safety Department (collectively, "Staff"), filed a departmental complaint against Qwest Corporation, ("Qwest") in response to service quality complaints received from residents of the Valentine, Nebraska exchange.

The complaint alleges that Qwest violated Neb. Admin. Code, Title 291, Ch. 5, §§ 2.02 and 2.08 and Progression Order No. 1, Docket No. NUSF-26 (Feb. 23, 2002), by failing to maintain adequate service; failing to install and maintain adequate plant; and failing to keep or comply with an adequate maintenance program. Staff further alleges that Qwest failed to comply with the service quality standards required by all Nebraska Eligible Telecommunications Carriers (ETCs). Staff seeks administrative penalties; an order withholding or reducing Nebraska Universal Service Fund support; and any other relief deemed appropriate by the Commission.

Qwest filed an answer on March 23, 2006 generally denying the allegations set forth in the complaint. Hearing was held on the matter on July 20, 2006 in Valentine, Nebraska.

EVIDENCE

Qwest provides local exchange service as defined by Neb. Admin. Code, Title 291, Ch. 5, § 001.01AA and is a Local Exchange Carrier (LEC). Qwest is also an Eligible

Telecommunications Carrier pursuant to Neb. Rev. Stat. § 86-324 (2004 Cum. Supp.) and Neb. Admin. Code, Title 291, Ch. 10, §§ 004.01 and 004.02. The Commission incorporated Neb. Admin. Code, Title 291, Ch. 5, §§ 2.02 and 2.08 of the Telecommunications Rules and Regulations into the standards which all ETCs must follow.

Mr. Hand testified generally regarding the procedures for receiving and processing telephone subscriber complaints and that the Department began to receive an unusual number of complaints from the Valentine exchange in June 2005. The complaints received were from subscribers in rural Valentine and were service related.

Several witnesses from the Valentine exchange testified regarding the problems experienced with their residential and business telephone service. Some were Qwest subscribers, while others were actually subscribers of NT&T, who provides service to their subscribers utilizing Qwest equipment and systems. In addition to the witnesses who testified during the hearing, trouble reports and repair tickets were also entered into the record. Subscribers experienced telephone outages, dropped calls, noises or static on the line, cross-talk, and periods of "half-rings". Many service outages lasted in excess of 24 hours. Subscribers testified that they spent significant time on the telephone with Qwest in an effort to have the problems resolved.

Qwest is in the process of deploying the GoDigital system to replace the analog system currently used in the Valentine exchange. Qwest contends that deployment may have contributed to the increased problems experienced by Valentine subscribers.

Staff observed Qwest technicians conduct nominal subscriber loop testing in the Valentine exchange, but was only able to test a relatively short amount of cable as compared to the significant amount of cable running throughout the exchange. The tests conducted showed results within normal parameters. Don Gray testified that other factors could be affecting the performance of the cable and the service received by subscribers, including moisture in the telephone line which may cause shorts and grounds, static, popping and other service quality issues. The older cable's insulation is often brittle and subject to breakage which could allow for moisture. He further testified that other tests that could be performed to indicate the condition of the cable that were not performed. Mr. Gray testified that the problems indicated by subscribers, repairs made, and the records provided by Qwest indicated that

the cause of the problems in the Valentine exchange were "most likely indicative of some cable problems..."

Mr. Pursley testified that Qwest has received nearly \$12 million in NUSF high cost support for the Valentine exchange since 1999 and that Qwest receives additional funds from the federal universal service fund program. Pursuant to NUSF-7, Qwest also received additional funds to be spent on a series of projects in the Valentine exchange related to upgrading facilities.

Ms. Mary Pat Cheshier testified on behalf of Qwest regarding Qwest's response to the various subscriber complaints filed and the efforts Qwest has made to remedy problems in the area. She further testified that the cable in the Valentine exchange was approximately 25 years old. Of the approximately 150 miles of cable, Qwest had replaced approximately 30,000 feet or 6 miles. She further provided updated information regarding trouble reports filed subsequent to the hearing. Mr. Robert J. Hubbard provided testimony as to how he believed that Qwest had met standards set by the Commission for service quality. Finally, Mr. Syed Hussain provided testimony regarding the problems experienced by Qwest with the GoDigital system.

#### FINDINGS AND OPINIONS

As a preliminary matter, on September 8, 2006 Qwest filed a Motion to Strike Portions of Staff's Brief. Qwest contends that those portions of the brief regarding investment of NUSF support in the Valentine area should be stricken. Staff filed an Objection to Respondent's Motion to Strike on September 11, 2006. The Commission finds that Qwest's motion should be and is denied.

With respect to the complaint filed, the Commission is charged with an affirmative duty to regulate service quality of telecommunications service in Nebraska. "The commission shall regulate the quality of telecommunications service provided by telecommunications companies..."<sup>1</sup> Furthermore, the Commission has the authority "to subject eligible telecommunications companies to service quality, customer service, and billing regulations..."<sup>2</sup>

As a LEC and an ETC, Qwest is obligated to "provide adequate access line service."<sup>3</sup> In determining whether Qwest provided adequate access line service, the Commission's

<sup>1</sup> Neb. Rev. Stat. § 86-123 (2004 Cum. Supp.)

<sup>2</sup> Neb. Rev. Stat. § 86-324(2)(a) (2004 Cum. Supp.)

<sup>3</sup> Neb. Admin. Code, Title 291, Ch. 5 Rule 002.02A.

consideration includes, but is not limited to, the adequacy of the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, customer complaints and held applications, the nature of access line service offered by the carrier and the nature of the access line services desired by the public served."<sup>4</sup>

As a threshold matter, Qwest has argued that because the trouble reports did not average six per hundred access lines, per month during a six month period pursuant to Neb. Admin. Code, Title 291, Ch. 5 § 2.04, that it provided adequate service under the objective standards set forth in Commission rules. However, the number of trouble reports is but one consideration that the Commission must make in determining whether a LEC or ETC has provided adequate service. Rule 2.02A clearly states that the Commission's consideration includes, "but is not limited to", trouble reports. To accept Qwest's argument on this point would be to render the language of Rule 2.02A meaningless.

The Commission therefore examines the evidence presented, considering all of the factors listed in Rule 2.02A and any other relevant information in the record. The number and nature of the complaints received by the Commission and shown in the documentation made part of the record indicates a systemic problem affecting rural areas of the Valentine exchange rather than isolated incidents. Qwest repeatedly ignored recurring service quality issues. Some customers reported recurrence of problems immediately or shortly after a repair was completed.

Although the Commission recognizes some of the individual complaints received have since been resolved, the Commission must ensure that the underlying cause is remedied and that the residents of rural Valentine receive the level of local exchange service available to residents throughout Nebraska. The Commission finds that based upon the evidence presented that within the Valentine exchange Qwest failed to provide adequate service; failed to install and maintain adequate plant; and failed to keep or comply with an adequate maintenance program in violation of Commission orders and rules and regulations outlined herein.

In keeping with the Commission's intent to ensure that residents of rural Valentine receive the level of service quality deserved, the Commission finds that Qwest shall abide by the following.

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<sup>4</sup> Id.

Testing and Repair

Qwest shall inspect and thoroughly test each segment of cable on all five (5) rural cable routes in the Valentine exchange. Such testing shall be conducted consistent with the methodology outlined in the testimony of Don Gray. Testing shall be conducted in such a way so as to minimize service outages. Prior to testing, any subscribers who will be affected by the testing shall be notified of the date and time the testing will occur. All testing shall be completed no later than **December 31, 2006**. Additionally, Qwest shall test and inspect the GoDigital systems.

Any cable found to be substandard shall be replaced in its entirety, from active device to active device. Qwest shall not splice around sections of defective cable. All replacement of substandard cable shall be replaced as soon as possible after testing, but shall be completed no later than **June 30, 2007**. Qwest shall also replace or repair any defective GoDigital equipment as soon as practicable.

Qwest shall provide to the Commission reports of all testing completed and reports of all repairs and/or replacements involving the five (5) rural cable routes in the Valentine exchange and GoDigital systems. The Commission may require additional testing if it deems such testing is necessary.

Reporting and Meetings

The Commission finds that Qwest shall file written monthly reports with the Commission outlining the following information for the entire Valentine exchange:

- a. Reports of all repair, upgrade and maintenance completed. Such report shall include a description of the project, a location of the project and any monies invested by Qwest toward completion of any project;
- b. GoDigital status reports, including testing, inspections, results, repairs and replacements, dropped links and resets.
- c. Monthly trouble report rates for retail and wholesale subscribers. Reports should be divided between rural and non-rural subscribers.
- d. Individual Trouble reports for subscribers, to include any repeat trouble reports received. Repeat trouble reports are defined as a subscriber reporting the same or similar problem as reported by the subscriber or someone in the subscriber's household in a prior trouble report within the previous six (6) months.

Reports should be divided between rural and non-rural subscribers;

- e. Outage reports made by retail and wholesale subscribers, including the date, duration and the date the outage was resolved;

The Commission further finds that Qwest shall meet with Commissioners once per month for the remainder of 2006 and quarterly thereafter to provide updates and answer questions regarding the reports received and the status of progress in the Valentine exchange.

#### Accountability and Enforcement

The Commission's power to impose administrative fine in this proceeding is clear. "The commission may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Regulation Act."<sup>5</sup> Furthermore, "[t]he commission may administratively fine pursuant to § 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act."<sup>6</sup>

Regardless of its power to order fines, the Commission finds that fines would not be appropriate at this time. If at any time, Qwest fails to abide by the terms of this order, the Commission may issue an order to show cause to determine whether administrative fines, withholding NUSF support or other remedy is warranted.

In addition to its administrative fining authority, the Commission may also order refunds to subscribers for inadequate service.<sup>7</sup> The record indicates that some subscribers received refunds related to the time of any outage reported. The Commission finds that to the extent any rural subscriber in the Valentine exchange who reported an outage did not receive a refund, that they receive said refund consistent with others that have been paid for the period of June 2005 through the date of this order.

<sup>5</sup> Neb. Rev. Stat. § 86-160 (2004 Cum. Supp.).

<sup>6</sup> Neb. Rev. Stat. § 86-324 (2004 Cum. Supp.).

<sup>7</sup> *In the matter of Application No. 30466 v. Blair Telephone Company*, 194 Neb. 55, 63, 230 N.W.2d 190, 196 (1975) ("inherent in the power of the commission is its right to force a utility to give the service for which its rates have been fixed. As a corollary to that power must be the right, where the service is woefully inadequate, to require the utility to rebate some portion of the rates set for reasonably adequate service.").

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The Commission finds that Qwest shall make whatever investment is necessary to correct the deficiencies in the Valentine exchange consistent with the terms herein.

The Commission may, at any time during the pendency of this compliance plan, order a service audit of the trouble reports, repair tickets and testing related to the Valentine exchange.

Miscellaneous

The Commission will continue to follow up with those subscribers who filed complaints with the Commission or testified at the hearing on this matter to ensure that problems have been resolved. Qwest shall also make monthly contacts with subscribers in the rural Valentine exchange to inquire about the quality of service. If any problems are reported, Qwest will address the problem as any other trouble report and include information regarding the problem and call with its monthly reports to the Commission.

Additionally, Qwest shall coordinate with NT&T and the Commission to the extent necessary to ensure that all of the testing and repair required herein is completed.

Finally, the Commission expects Qwest to inspect, test and repair the inside wiring in the Valentine exchange on the subscriber's side of the Network Interface Device as offered in its proposed compliance plan.

Once all testing and repairs are complete or after June 30, 2007, the Commission shall review this matter to determine whether the docket shall be closed.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Qwest's Motion to Strike Portions of Staff's Brief be denied.

IT IS FURTHER ORDERED that the complaint against Qwest is sustained as outlined herein.

IT IS FINALLY ORDERED that Qwest adhere to the Compliance Plan with respect to the Valentine exchange as outlined herein or face possible administrative fines, withholding of NUSF support, or other appropriate remedies available to the Commission.

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MADE AND ENTERED in Lincoln, Nebraska on this 19th day of  
September, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director